

1 Paul S. Padda
2 NV Bar No. 10417
3 PAUL PADDA LAW, PLLC
4 4560 South Decatur Blvd., Suite 300
5 Las Vegas, NV 89103
6 Tel: (702) 366- 1888
7 psp@paulpaddalaw.com

8 Paul J. Lukas, MN Bar No. 22084X*
9 lukas@nka.com
10 Brock J. Specht, MN Bar No. 0388343*
11 bspeccht@nka.com
12 Benjamin J. Bauer, MN Bar No. 0398853*
13 bbauer@nka.com
14 NICHOLS KASTER, PLLP
15 4700 IDS Center
16 80 S 8th Street
17 Minneapolis, MN 55402
18 Telephone: (612) 256-3200
19 Facsimile: (612) 338-4878

20 * LR IA 11-2 petition approved

21 ATTORNEYS FOR PLAINTIFFS AND THE PROPOSED CLASS

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Danny Wanek, Juan Duarte, Rick Ruberton,
and Linda Ruberton, as representatives of a
class of similarly situated persons, and on
behalf of the Caesars Entertainment
Corporation Savings & Retirement Plan,

Plaintiffs,

v.

Russell Investments Trust Company,
Caesars Holdings Inc., the Plan Investment
Committee, and the 401(k) Plan Committee,

Defendants.

Case No. 2:21-cv-00961-CDS-BNW

FIFTH AMENDED COMPLAINT –
CLASS ACTION

NATURE OF THE ACTION

2 1. Plaintiffs Danny Wanek, Juan Duarte, Rick Ruberton, and Linda Ruberton
3 (“Plaintiffs”), as representatives of the class defined herein, and on behalf of the Caesars
4 Entertainment Corporation Savings & Retirement Plan (“Plan”), bring this action against
5 Defendants Caesars Holdings Inc. (“Caesars”), the Plan Investment Committee, the 401(k) Plan
6 Committee, and Russell Investments Trust Company (“Russell”) (together, “Defendants”) for
7 breaches of their fiduciary duties under the Employee Retirement Income Security Act (“ERISA”).
8 As described herein, Russell obtained control of the Plan’s investment menu in 2017 and promptly
9 filled the Plan with its own poorly performing proprietary funds. Russell’s gambit was a life
10 preserver for its struggling funds and brought \$1.4 billion in new investment at a critical time when
11 other plan sponsors were leaving Russell’s funds. The deal did not promote the interest of Plan
12 participants, however, as the Plan already had in place a menu of leading funds that consistently
13 outperformed Russell’s funds at similar or lower levels of risk. Russell’s self-serving swap has been
14 disastrous for the Plan and cost participants more than \$100 million in lost investment earnings to
15 date. Plaintiffs bring this action to recover these losses and obtain equitable relief and other
16 appropriate relief as provided by ERISA.

PRELIMINARY STATEMENT

18 2. The Plan holds the retirement savings of more than 40,000 employees of Caesars
19 affiliates nationwide. In the fallout of the leveraged buyout (LBO) of the company in 2008 by
20 private equity firms and resulting bankruptcy, Plan participants have struggled to build their nest
21 eggs. The company's owners eliminated matching contributions for three straight years and brought
22 them back at anemic levels until well after the company emerged from bankruptcy and related
23 litigation in late 2017.

24 3. As Caesars' owners and executives scrambled to solve the company's unsustainable
25 LBO debt, unloading Plan responsibilities to a "fiduciary outsourcing" provider like Russell was
26 an attractive option. Russell took over control of the Plan's investment menu in 2017 as a fractured
27 Caesars was divvied up among creditors.

1 4. The Plan’s menu did not need an overhaul. The Plan offered leading, low-cost
 2 investment funds, including age-based balanced options¹ managed by State Street with long track
 3 records of success. But instead of prudently and objectively evaluating the Plan’s needs, Russell
 4 transferred all of the Plan’s \$1.4 billion in assets to its own proprietary funds, including more than
 5 \$1 billion to its fledgling age-based funds. Russell did so despite the fact that Russell’s age-based
 6 funds had yielded disappointing results and had lost or were soon to lose other key investors
 7 (including Russell’s own employee plan).

8 5. There was no participant-focused justification for Russell’s self-serving swap at the
 9 time. Over short and long periods prior to the transfer, the existing options, on balance, performed
 10 better at similar or lower levels of risk. The deal was a boon to Russell, however, as it was able to
 11 add \$1.4 billion in new investment to help prop up its funds at a difficult time for the funds.

12 6. Russell’s longshot bet on itself did not pay off for participants. Russell’s funds have
 13 continued to underperform the funds that they replaced while taking on similar or greater levels of
 14 risk. The Plan has suffered more than \$100 million in lost investment returns to date as a result of
 15 Russell’s replacement of the Plan’s funds with Russell funds.

16 7. Fiduciary duties under ERISA are “highest known to the law.” *Howard v. Shay*, 100
 17 F.3d 1484, 1488 (9th Cir. 1996) (citation omitted). Russell’s conflicted judgment breached multiple
 18 ERISA fiduciary standards, including its duties of loyalty to Plan participants and its duty of
 19 prudence. *See Lowen v. Tower Asset Mgt., Inc.*, 829 F.2d 1209, 1219 (2d Cir. 1987) (“[P]lan trustees
 20 [may] delegate investment authority to a professional advisor *who then becomes a fiduciary with a*
 21 *duty of care and duty of loyalty to the plan*”) (emphasis added). And Caesars’ acquiescence to
 22 Russell breached its own “exacting” fiduciary obligations to prudently select and monitor an
 23 outsourcing provider for the Plan. *See Donovan v. Mazzola*, 716 F.2d 1226, 1231 (9th Cir. 1983);
 24 *Lowen*, 829 F.2d at 2020 (the appointing fiduciary may share “joint and several liability” with
 25 outsourced fiduciary based on its own conduct).

26 8. Plaintiffs bring this action under ERISA to recover the Plan’s losses, prevent further
 27 mismanagement of the Plan, and obtain other appropriate relief.

28 ¹ “Age-based” funds are also known as “target date” funds. *See infra*, ¶ 39, n. 13.

JURISDICTION AND VENUE

9. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 29 U.S.C. § 1132(e)(1).

10. Venue is proper in this district under 29 U.S.C. § 1132(e)(2) and 28 U.S.C. § 1331(b) because this is the district where the Plan is administered, where breaches of fiduciary duties giving rise to this action occurred, and where a Defendant resides and may be found.

PARTIES

11. Plaintiff Danny Wanek resides near Atlantic City, New Jersey. Wanek is a current participant in the Plan, and has been a participant since around 2007. Wanek's account was transferred to a Russell age-based fund and invested in Russell funds as Plan investment options, having only Russell funds as options. Wanek's account would be worth more today if Defendants had not breached their fiduciary duties as described herein.

12. Plaintiff Juan Duarte resides near Chicago, Illinois. Duarte is a current participant in the Plan, and has been a participant since 1994. Duarte's account was invested in a State Street age-based fund, among other Plan options, until 2017, when all non-Russell options were removed and his account was transferred to a Russell age-based fund (the Russell 2040 Strategy Fund). Duarte has rebalanced his account several times since then using standalone (non-age-based) funds in the Plan, and each time he had only Russell funds as options. Duarte's account would be worth more today if Defendants had not breached their fiduciary duties as described herein.

13. Plaintiff Rick Ruberton resides near Atlantic City, New Jersey. He was a participant in the Plan from at least 2016 to 2021. His account was transferred to a Russell age-based fund (the Russell 2035 Strategy Fund) and invested in Russell funds as Plan investment options, having only Russell funds as options. His account would be worth more today if Defendants had not breached their fiduciary duties as described herein.

14. Plaintiff Linda Ruberton resides near Atlantic City, New Jersey. She was a participant in the Plan from at least 2016 to 2021. Her account was transferred to a Russell age-based fund (the Russell 2035 Strategy Fund) and invested in Russell funds as Plan investments.

1 options, having only Russell funds as options. Her account would be worth more today if
 2 Defendants had not breached their fiduciary duties as described herein.

3 15. Defendant Caesars Holdings Inc. is a holding company that owns gaming and other
 4 entertainment and hospitality operations worldwide. These affiliated operations include Caesars
 5 Palace, Planet Hollywood, Harrah's, Horseshoe Casinos, and the World Series of Poker, among
 6 others. Prior to late 2020, Caesars was known as Caesars Entertainment Corporation.² Caesars is
 7 the sponsor of the Plan.

8 16. The Plan Investment Committee was the committee created by Caesars on or before
 9 January 1, 2016, to oversee Plan investments. Acting through its Board of Directors or a committee
 10 thereof, Caesars appointed individuals to the Plan Investment Committee to select, monitor, and
 11 remove Plan investments. Caesars also authorized the Plan Investment Committee to outsource its
 12 investment duties to an “investment manager” under the procedure established by ERISA § 3(38).
 13 All Plan Investment Committee members were employees of Caesars or its affiliates, and the
 14 members included high-ranking Caesars executives such as the CFO. The Plan Investment
 15 Committee was dissolved and replaced by the 401(k) Plan Committee on or after July 20, 2020.

16 17. The 401(k) Plan Committee is the committee created by Caesars on or after July 20,
 17 2020, to succeed to the investment duties of the Plan Investment Committee (among other things).
 18 Acting through its Board of Directors or a committee thereof, Caesars appoints employees of
 19 Caesars or its affiliates to serve on the 401(k) Plan Committee.³

20 18. Defendant Russell Investments Trust Company is a non-depository trust company
 21 based in Seattle.⁴ Russell offers fiduciary investment services to institutional investors, including
 22 retirement plans. Among the services that Russell offers is “fiduciary outsourcing” to defined
 23

24 ² In July 2020, Caesars was acquired by Eldorado Resorts Inc., which reorganized as Caesars
 25 Entertainment Inc., an entity distinct from, and now the ultimate owner of, the Plan’s sponsor,
 26 Caesars Holdings Inc. f/k/a Caesars Entertainment Corporation. Based on the Plan’s most recent
 27 public filings in October 2020, the name and sponsorship of the Plan have not changed as a result
 28 of the Eldorado acquisition.

24 ³ References to “the Caesars Defendants” herein include Caesars, the Plan Investment Committee,
 25 and the 401(k) Plan Committee.

24 ⁴ Russell is not affiliated with the firm that maintains and publishes “Russell” indexes. Russell was
 25 divided from the indexing business and sold to an unaffiliated private equity buyer prior to its
 26 engagement by Caesars.

1 contribution retirement plans. Through its fiduciary outsourcing service, Russell takes control of
 2 plan investment menus from plan sponsors. Russell also manages proprietary collective trust funds
 3 that Russell offers as investment options to defined contribution retirement plans. Russell uses its
 4 own judgment and proprietary investment processes at multiple levels in managing its funds,
 5 including high level asset allocation and strategy decisions, appointment and monitoring of sub-
 6 advisors to implement each fund's strategy, and making individual security level investment
 7 decisions where Russell appointed itself or an affiliate as the sub-advisor with respect to particular
 8 assets (typically 10%-20% of each portfolio).

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THE PLAN

12 19. The Plan was established in 1990 by Harrah's Entertainment Inc. as a tax-deferred
 13 vehicle to help Harrah's employees save for retirement. Harrah's acquired other entertainment
 14 properties over the years, including Caesars Palace, and the entire enterprise was acquired by
 15 private equity firms in the 2008 LBO. In 2010, the company's owners renamed the Plan and the
 16 Plan's sponsor, replacing "Harrah's" with "Caesars" as the company's flagship brand. The Plan's
 17 participants include current and former employees throughout the Caesars family of companies.

18 20. The Plan is an "employee pension benefit plan" within the meaning of 29 U.S.C. §
 19 1002(2)(A) and a "defined contribution" or "individual account" plan within the meaning of 29
 20 U.S.C. § 1002(34). The Plan is also an "ERISA section 404(c) plan", which means that participants
 21 may choose between investment options (called "designated investment alternatives") made
 22 available by the Plan's fiduciaries. *See* 29 C.F.R. § 2550.404c-1(a)(1) & (e)(4). In such plans, the
 23 set of investment options made available by a plan's fiduciaries is called the "investment menu".
 24 *E.g.*, DEP'T OF LABOR, *Financial Factors in Selecting Plan Investments*, 85 Fed. Reg. 72846, 72863
 25 (Nov. 13, 2020) ("[W]hen assembling, choosing, or modifying an *investment menu* for participants'
 26 investment choices ...") (emphasis added).

27 21. As a defined contribution plan, the Plan provides retirement benefits to participants
 28 that are "limited to the value of their own individual investment accounts, which is determined by

1 the market performance of employee and employer contributions, less expenses.” *See Tibble v.*
 2 *Edison Intern.*, 575 U.S. 523, 525 (2015). Thus, the investment options made available by the Plan’s
 3 fiduciaries are critical to participants’ retirement outcomes.⁵

4 22. Defendants are fiduciaries of the Plan. Caesars is a fiduciary because it appointed
 5 members of the Plan Investment Committee and 401(k) Plan Committee and has authority to
 6 remove them. The authority to appoint and remove other fiduciaries constitutes “discretionary
 7 authority or discretionary control respecting management of [a] plan” and confers fiduciary status
 8 under ERISA, 29 U.S.C. § 1002(21)(A)(i).

9 23. The Plan Investment Committee and 401(k) Plan Committee are fiduciaries because
 10 the Plan Investment Committee had, and the 401(k) Plan Investment Committee has, authority to
 11 select and remove investments for the Plan, as well as the authority to outsource their investment
 12 duties to an “investment manager” under ERISA § 3(38). Authority to select and remove
 13 investments constitutes “any authority or control respecting management or disposition of [Plan]
 14 assets” and confers fiduciary status under ERISA, 29 U.S.C. § 1002(21)(A)(i). Likewise, authority
 15 to appoint and remove investment managers under ERISA § 3(38) constitutes “discretionary
 16 authority or discretionary control respecting management of [a] plan” and confers fiduciary status
 17 under ERISA, 29 U.S.C. § 1002(21)(A)(i).

18 24. In December 2016, the Investment Committee hired Russell as its fiduciary
 19 outsourcing partner under the procedure established by ERISA § 3(38). Caesars knew of Russell’s
 20 appointment at the time and executed Russell’s engagement agreement as to certain terms related
 21 to Caesars’ corporate obligations and interests.

22

23

24 ⁵ Defined contribution plans are distinct from “defined benefit” plans, as defined benefit plan
 25 participants receive fixed payouts that cannot be reduced based on the market performance of the
 26 underlying assets of their plan. *See Hughes Aircraft Co. v. Jacobson*, 525 U.S. 432, 439 (1999)
 27 (“Such a plan, as its name implies, is one where the employee, upon retirement, is entitled to a fixed
 28 periodic payment. … [T]he employer typically bears the entire investment risk and … must cover
 any underfunding as the result of a shortfall that may occur from the plan’s investments.”)
 (quotation marks and citations omitted); *see also Thole v. U. S. Bank N.A.*, 140 S. Ct. 1615, 1616
 (2020) (“[P]articipants in a defined-benefit plan are not similarly situated to the beneficiaries of a
 private trust or to participants in a defined-contribution plan, and they possess no equitable or
 property interest in the plan[.]”).

1 25. Russell assumed control of the Plan’s investment menu in August 2017. Since
2 August 2017, Russell has exercised authority to “manage, acquire, or dispose of any asset of [the
3 Plan]”, see 29 U.S.C. § 1002(38), including the authority to select and remove investment options
4 for the Plan. Russell’s authority constitutes “authority or control respecting management or
5 disposition of [Plan] assets” and “discretionary authority or discretionary control respecting
6 management of [a] plan” and confers fiduciary status under 29 U.S.C. § 1002(21)(A)(i). As
7 required by ERISA § 3(38), Russell acknowledged in writing that it is a fiduciary to the Plan.

8 26. As of the end of 2016, the Plan had around 39,000 participants with account balances
9 and \$1.4 billion in assets. The Plan offered a diversified menu of investment options that Caesars
10 and the Investment Committee assembled and monitored with the assistance of a professional
11 investment consultant. These options included low cost separately managed accounts and collective
12 investment trusts in a range of asset classes, including “all-in” balanced funds tailored to a
13 participant’s age that were managed by global investment leader State Street.⁶

14 27. When Russell assumed control of the Plan’s investment menu in 2017, Russell
15 replaced all of the Plan’s investment options with its proprietary collective investment trusts. As of
16 the end of 2019 (the reporting date of the Plan’s most recent public filings), the Plan had around
17 42,000 participants and \$1.6 billion in assets. Russell’s affiliated funds continue to make up 100%
18 of the Plan’s investment options. Around 75% of the Plan’s assets are invested in Russell’s age-
19 based funds.

ERISA FIDUCIARY DUTIES

21 28. ERISA recognizes “that the continued well-being and security of millions of
22 employees and their dependents are directly affected by [retirement] plans.” 29 U.S.C. § 1001(a).
23 Thus, “[t]he principal object of the statute is to protect plan participants and beneficiaries.” *Boggs*
24 *v. Boggs*, 520 U.S. 833, 845 (1997) (citation omitted). The “crucible of congressional concern was
25 misuse and mismanagement of plan assets by plan administrators” and “ERISA was designed to
26 prevent these abuses.” *Mass. Mut. Life Ins. Co. v. Russell*, 473 U.S. 134, 140 n.8 (1985) (citing
27 extensive legislative history).

²⁸ ⁶ See <https://www.advratings.com/top-asset-management-firms> (ranking State Street as the fifth largest asset management firm in the world) (last visited September 15, 2021).

1 29. To protect plan participants, ERISA incorporates the twin fiduciary duties of loyalty
 2 and prudence. 29 U.S.C. § 1104(a)(1). These fiduciary duties are the “highest known to law.”
 3 *Howard*, 100 F.3d at 1488.

4 30. The duty of loyalty requires fiduciaries to act “solely in the interest of the
 5 participants and beneficiaries,” 29 U.S.C. § 1104(a)(1), with an “eye single” to the interests of such
 6 participants and beneficiaries. *Pegram v. Herdrich*, 530 U.S. 211, 235 (2000). “A fiduciary may
 7 not subordinate the interests of the participants and beneficiaries in their retirement income or
 8 financial benefits under the plan to other objectives, and may not sacrifice investment return or take
 9 on additional investment risk to promote non-pecuniary benefits or goals.” 29 C.F.R. 2550.404a-
 10 1(c)(1); *see also* DEP’T OF LABOR, ERISA Adv. Op. 88-16A, 1988 WL 222716, at *3 (Dec. 19,
 11 1988) (“A decision to make an investment may not be influenced by [other] factors unless the
 12 investment, when judged solely on the basis of its economic value to the plan, would be equal or
 13 superior to alternative investments available to the plan.”).

14 31. The duty of prudence requires fiduciaries to exercise the “care, skill, prudence, and
 15 diligence” that a prudent person would utilize in managing a similar plan.” 29 U.S.C.
 16 § 1104(a)(1)(B). To satisfy the duty of prudence with respect to an investment, a fiduciary must
 17 “employ[] appropriate methods to investigate the merits of the investment”, *Mazzola*, 716 F.2d at
 18 1232, including considering the “the risk of loss and opportunity for gain … associated with the
 19 investment … compared to the opportunity for gain … associated with reasonably available
 20 alternatives with similar risks”. 29 C.F.R. § 2550.404a-1(a)(2)(i). Where a potential conflict of
 21 interest exists, fiduciaries must engage in an “intensive and scrupulous independent investigation of
 22 their options to insure that they act in the best interests of the plan beneficiaries.” *Howard*, 100 F.3d
 23 at 1488–89.

24 32. These fiduciary duties apply to both the selection and the ongoing monitoring and
 25 retention of investment options in a defined contribution plan’s menu. *See* 29 C.F.R. 2550.404c-
 26 1(d)(2)(iv) (providing that, while participants choose between investment options, plan fiduciaries
 27 have a “duty to prudently select and monitor any … designated investment alternative offered under
 28 the plan”); 29 C.F.R. § 404a-1(d)(1) (confirming that ERISA fiduciary duties “apply to a fiduciary’s

1 selection or retention of designated investment alternatives available to participants and
 2 beneficiaries in an individual account plan"); *see also Tibble*, 575 U.S. at 529. ("[A] trustee has a
 3 continuing duty to monitor trust investments and remove imprudent ones ... [that] exists separate
 4 and apart from the trustee's duty to exercise prudence in selecting investments[.]").

5 33. The same fiduciary standards also apply to the selection, monitoring, and retention
 6 of any service provider to whom fiduciary functions are outsourced. *See* 29 C.F.R. 2550.404c-
 7 1(d)(2)(iv) (providing that plan fiduciaries have a "duty to prudently select and monitor service
 8 providers"); 29 C.F.R. § 2509.75-8, at FR-17 ("At reasonable intervals the performance of other
 9 fiduciaries should be reviewed by the appointing fiduciary in such manner as may be reasonably
 10 expected to ensure that their performance has been in compliance with the terms of the plan and
 11 statutory standards[.]").⁷

12 DEFENDANTS' MISMANAGEMENT OF THE PLAN

13 *The LBO and Its Effect on the Company and the Plan*

14 34. In January 2008, a group of private equity firms bought out Caesars and took it
 15 private. The transaction was financed by more than \$10 billion in new debt—doubling the
 16 company's existing debt—and ranked as one the largest LBOs in history.⁸

17 35. The LBO debt was not sustainable once revenues to Caesars properties declined
 18 following the financial crisis. A cascade of cost cutting and financial engineering measures
 19 followed as the company's owners tried to keep control and avoid losing their equity investment to
 20 creditors.⁹

21 ⁷ The Uniform Prudent Investor Act, often cited by courts to construe ERISA fiduciary duties, *see, e.g.*, *Tibble*, 575 U.S. at 529, further provides that a fiduciary who delegates investment management functions "shall exercise reasonable care, skill, and caution in: (1) selecting an agent; (2) establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust; and (3) periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the terms of the delegation." UPIA § 9(a), *available at* <https://www.uniformlaws.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=22cb68ce-097b-178f-899d-320e70be214d> (last visited September 15, 2021).

22 ⁸ *See In Re Caesars Entertainment Operating Company Inc.*, 15-01145 (N.D.Ill. Bankr.), Doc. 3720-5, Final Report of Examiner Richard J. Davis, vol. 5, at 757.

23 ⁹ *See* Sujeet Indap, *What happens in Vegas...the messy bankruptcy of Caesars Entertainment*, FINANCIAL TIMES (Sept. 26, 2017), *available at* <https://www.ft.com/content/a0ed27c6-a2d4-11e7-b797-b61809486fe2> (last visited September 15, 2021). The same reporter recently published a book that delves deeper into the case. *See* Sujeet Indap, *The Caesars Palace Coup: How a Billionaire*

1 36. The company stopped making Plan contributions in 2009 and did not resume for
 2 more than three years.¹⁰ When the company resumed contributions, the 50% match was subject to
 3 a \$600 cap per person per year.¹¹ Based on the Plan's regulatory filings, the effective match with
 4 the cap was only 17%-18% of employee contributions between 2013 and 2016. The median among
 5 plans with \$1 billion or more in assets was 56%-58%.

6 37. Prior to the LBO, the average participant balance in the Plan was in the 10th
 7 percentile of billion-dollar plans, and the effective company match was in the 24th percentile. After
 8 Caesars' suspension and cuts to the match, by the end of 2016, the average participant balance
 9 ranked in the bottom 3%, and the effective company match was in the bottom 5%.

10 38. Caesars' post-LBO financial engineering also caught up with the company.¹² A
 11 number of lawsuits accusing the company and its executives (including at least one Plan Investment
 12 Committee member) of improprieties were filed in 2014. In 2015, the company put its primary
 13 operating subsidiary in bankruptcy, and accusations of wrongdoing followed the company into
 14 bankruptcy. The company settled with creditors in late 2016, and the firms that led the LBO finally
 15 lost control. A fractured Caesars, now controlled by disparate groups of creditors electing their own
 16 board members, emerged from bankruptcy in August 2017.

17 39. The same month, Russell took control of the Plan's investments through its fiduciary
 18 outsourcing program. With the upheaval at the top at Caesars in the preceding years and the
 19 uncertain future direction of the fractured company, meeting the exacting demands of administering
 20 an employee retirement plan was likely not a top priority for Caesars. Handing control to a fiduciary
 21 outsourcing provider like Russell was an attractive option for Caesars and the Plan Investment
 22 Committee.

23

 24 *Brawl Over the Famous Casino Exposed the Power and Greed of Wall Street* (Diversion Books
 2021).

25 ¹⁰ Most employers did not suspend contributions during the financial crisis. See American Benefits
 26 Institute, *Trends in 401(k) Plans and Retirement Rewards* (Mar. 2013) at 3, (finding that around 9
 27 out of 10 employers did not suspend contributions between 2007 and 2012), *available at*
 28 <https://www.americanbenefitscouncil.org/pub/?id=e613e2a9%2Dcb3b%2Db159%2D6cff%2D6931bd1953a6> (last visited September 15, 2021).

29 ¹¹ For example, due to the \$600 limit, a participant earning \$50,000 per year and contributing 6%
 30 (\$3,000) would receive only a 20% match (\$600). The cap was raised in 2018 but not eliminated
 31 until 2019.

32 ¹² See *Indap*, *supra*, n. 9.

Russell Overhauls the Plan's Menu

40. Immediately upon assuming control over the Plan's investment menu in August 2017, Russell removed all of the existing funds from the Plan's investment menu and replaced them with Russell-affiliated funds.

41. In Russell's overhaul of the Plan, the Plan's "all-in" age-based balanced options (also known as "target date" funds¹³) were replaced with Russell's competing age-based funds. And the Plan's options devoted to particular asset classes—alternatives to the age-based funds to allow participants to customize their portfolios—were replaced with Russell-affiliated funds in the same asset classes.

42. In addition, the Plan “re-enrolled” participants so that their accounts would be automatically invested in the default age-based option for their age group, unless they affirmatively elected to create a custom portfolio.¹⁴

43. As a result of these measures, all of the Plan's assets (around \$1.4 billion) were transferred (or "mapped") to Russell's proprietary funds, and approximately three-quarters of the Plan's assets (more than \$1 billion) were poured into Russell's age-based funds.

Russell's Funds Offered No Prospective Advantage Over the Plan's Prior Menu

44. The prior menu did not need to be thrown out. Prior to Russell, the Plan had a professional investment consultant that helped develop and monitor the Plan's investment menu. The investment options included institutionally priced separate accounts, collective investment trusts, and mutual funds from leading investment managers routinely selected by other large defined contribution plans.

45. The prior options also had a consistent track record of success relative to Russell's replacement funds. For example, the Plan's age-based funds managed by State Street outperformed

¹³ US DEP’T OF LABOR, *Target Date Retirement Funds – Tips for ERISA Plan Fiduciaries* (Feb. 2013) (“TDFs offer a long-term investment strategy based on holding a mix of stocks, bonds and other investments … that automatically changes over time as the participant ages.”), available at <https://www.dol.gov/sites/dolgov/files/ebsa/about-ebsa/our-activities/resource-center/fact-sheets/target-date-retirement-funds.pdf> (last visited September 15, 2021).

¹⁴ Plaintiffs do not challenge the decision to re-enroll participants, only the replacement of all of the Plan's options with Russell-affiliated funds.

1 Russell's age-based funds, on balance, over the 3- and 5-year periods leading up to the swap, as
 2 well as since the inception of each Russell fund.¹⁵ *See Illustration 1, infra.*

3 46. The prior age-based funds achieved these superior returns at comparable, and often
 4 lower, levels of risk. The industry's standard measure of risk is the standard deviation of a fund's
 5 returns. The funds' standard deviations were comparable leading up to Russell's overhaul, with the
 6 State Street funds often exhibiting less risk.

7 47. The illustration below compares the performance of State Street's age-based funds
 8 to Russell's age-based funds leading up to Russell's menu overhaul by identifying (1) the fund that
 9 outperformed over each period, (2) the excess average annual return achieved by the outperforming
 10 fund, (3) the fund that exhibited lower risk (as measured by the standard deviation of fund returns
 11 during the period), and (4) the difference between the standard deviations of the lower risk fund
 12 and the higher risk fund.

13 *Illustration 1: Prior Age-Based Series vs. Russell Age-Based Series As of Year-End 2016*
 14 *2055 Fund*

	3-Year	5-Year	Life of Russell Fund
Higher Return Fund	State Street (+ 0.56%)	State Street (+ 0.43%)	State Street (+ 0.58%)
Lower Risk Fund	State Street (- 0.36%)	State Street (- 0.56%)	State Street (- 0.57%)

18 *2050 Fund*

	3-Year	5-Year	Life of Russell Fund
Higher Return Fund	State Street (+ 0.52%)	State Street (+ 0.41%)	State Street (+ 1.29%)
Lower Risk Fund	State Street (- 0.33%)	State Street (- 0.54%)	State Street (- 1.05%)

21 *2045 Fund*

	3-Year	5-Year	Life of Russell Fund
Higher Return Fund	State Street (+ 0.50%)	State Street (+ 0.42%)	State Street (+ 0.98%)
Lower Risk Fund	State Street (- 0.30%)	State Street (- 0.49%)	State Street (- 1.03%)

25

 26 ¹⁵ Russell launched its age-based funds in two waves in 2007 and 2008, first funds with even-
 27 numbered anticipated retirement dates in 2007, and then odd-numbered funds in 2008. Russell then
 28 added the 2055 fund in 2011 and the 2060 fund in 2015. In the following analysis, the "Life of
 Russell Fund" period starts with the first full month that both the Russell and State Street funds
 were in operation (for each fund except 2050, Russell launched second), as partial month returns
 are not available for comparison for all funds. Additionally, the 2060 fund did not have a minimum
 3-year history to compare as of the end of 2016 and is therefore not included in this analysis.

1 2040 Fund

	3-Year	5-Year	Life of Russell Fund
Higher Return Fund	State Street (+ 0.45%)	State Street (+ 0.33%)	State Street (+ 0.90%)
Lower Risk Fund	State Street (- 0.65%)	State Street (- 0.72%)	State Street (- 1.20%)

4 2035 Fund

	3-Year	5-Year	Life of Russell Fund
Higher Return Fund	State Street (+ 0.44%)	Russell (+ 0.33%)	State Street (+ 0.81%)
Lower Risk Fund	State Street (- 0.25%)	State Street (- 0.76%)	State Street (- 1.38%)

7 2030 Fund

	3-Year	5-Year	Life of Russell Fund
Higher Return Fund	State Street (+ 0.40%)	State Street (+ 0.99%)	State Street (+ 1.44%)
Lower Risk Fund	Russell (- 0.79%)	Russell (- 0.09%)	State Street (- 1.76%)

11 2025 Fund

	3-Year	5-Year	Life of Russell Fund
Higher Return Fund	State Street (+ 0.30%)	State Street (+ 1.06%)	State Street (+ 1.42%)
Lower Risk Fund	Russell (- 1.54%)	Russell (- 0.93%)	State Street (- 0.06%)

15 2020 Fund

	3-Year	5-Year	Life of Russell Fund
Higher Return Fund	State Street (+ 0.13%)	State Street (+ 1.29%)	State Street (+ 0.89%)
Lower Risk Fund	Russell (- 1.61%)	Russell (- 1.23%)	Russell (- 0.83%)

18 48. Faced with these results, a prudent and objective fiduciary would not have replaced
 19 the State Street age-based series with Russell's age-based series in 2017. Indeed, fiduciaries of at
 20 least 25 ERISA-covered defined contribution plans with more than \$1 billion in assets retained the
 21 State Street age-based series as of the end of 2016. No such plan with more than \$1 billion held
 22 Russell's age-based funds at that time.¹⁶

23 16 The switch to Russell's age-based funds was driven by Russell's self-interest, not concerns about
 24 the existing State Street age-based funds or their glide path. There is no contemporaneous evidence
 25 that the switch was motivated by a desire to adopt an age-based series that reaches its final asset
 26 allocation at retirement (a "to retirement" series) instead of continuing to adjust its asset allocation
 27 through retirement (a "through retirement" series). In any event, Russell would not have been a
 28 top candidate. Other asset management leaders offered superior "to retirement" series, including
 Blackrock and JPMorgan. Blackrock—first place in the assets under management rankings cited
supra at note 6—beat Russell's age-based funds in every vintage over the 3-years leading up to the
 end of 2016, and in all vintages except the 2035 fund over 5-years, with its Blackrock Lifepath
 Index series, which is managed "to retirement" and settles at a similar allocation to equity assets as

1 49. The Plan's other investment options also did not warrant replacement with Russell's
2 funds. The prior menu included standard asset classes found in defined contribution plans and
3 leading investment managers. For example, the Plan included an actively managed U.S. stock fund
4 managed by Dodge & Cox. This fund is held by more than 100 ERISA-covered defined
5 contribution plans with more than \$1 billion in assets and, as of the end of 2016, had beat its
6 benchmark by more than 2.3% per year over the prior five years. The Plan also included passive
7 funds managed by State Street that successfully tracked common indexes of U.S. stocks,
8 international stocks, and bonds for many years. State Street's S&P 500 index fund, for example, is
9 held by more than 70 ERISA-covered defined contribution plans with more than \$1 billion in assets.
10 Yet Russell liquidated all of these holdings in favor of its proprietary asset class funds—seven of
11 nine of which were not held by any ERISA-covered defined contribution plan with more than \$1
12 billion in assets at the end of 2016. The other two were held by three or fewer such plans. A prudent
13 and objective fiduciary would not have made this wholesale swap to Russell funds, nor did the
14 performance of the Russell funds justify this massive overhaul.¹⁷

Russell Needed an Infusion of Assets at a Difficult Time for the Funds

16 50. Russell's performance struggles did not go unnoticed by other plan fiduciaries.
17 After hitting a high mark around 2013, Russell started to lose investors in its age-based funds, and
18 assets in the funds started to decline. Between year-end 2013 and year-end 2016, the funds' reported

19 Russell's series at retirement. JPMorgan—eighth in the assets rankings—also beat Russell over 3-
20 years as of year-end 2016 with its “to retirement” JPMorgan Passive Blend series (which was
21 launched in 2012 and therefore lacked a 5-year period suitable for comparison), and did so with a
more conservative final allocation to equity assets.

¹⁷ For example, as of year-end 2016 (the end of the last full calendar year prior to the switch), the Russell Small Cap Fund underperformed its self-selected benchmark by 0.88% per year over the prior three years. The Plan’s existing option to invest in the small cap equity asset class was a small and mid-cap blend managed by State Street that had outperformed the Russell fund by 0.68% per year over the same period. If it was prudent to switch to a fund with a narrower small cap mandate, the Plan could have switched to a State Street index fund that successfully tracked the Russell Small Cap fund’s exact benchmark (and therefore offered the same returns that Russell had attempted yet failed to beat in the prior three years). The Plan also could have selected an actively managed fund that attempted to beat and had succeeded in beating the same benchmark as the Russell fund—including the JPMorgan Small Cap Equity Fund, which beat the same benchmark by 1.93% over the same period net of fees (+2.81% vs. Russell Small Cap), or the T. Rowe Price Small Cap Stock Fund, which beat the benchmark by 0.32% per year over the same period net of fees (+1.20% vs. Russell Small Cap). These actively managed alternatives were well established, with over \$5 billion in assets each, and beat both the benchmark and the Russell Small Cap Fund while exhibiting lower risk (as measured by the standard deviation of returns over the three-years prior to the end of 2016).

1 assets decreased by 20%, even as the underlying investments returned an average of 3%-4% per
 2 year. The 20% drop represented significant net outflows from investors—including Russell's own
 3 employee plan. Russell withdrew around \$130 million of its own plan assets from the age-based
 4 funds in 2016.

5 51. During 2017, four additional fiduciaries, representing twelve plans with over \$450
 6 million invested in Russell's age-based funds, pulled their investments. These fiduciaries
 7 represented nearly half of the funds' remaining investors at year-end 2016, and more than one-third
 8 of the funds' reported assets.¹⁸ Russell was likely aware of these completed or impending
 9 redemptions as it prepared to take over the Plan's menu in 2017.

10 52. Maintaining asset levels is critical for fund managers. Managers charge fees and
 11 expenses as a percentage of the assets in the fund, so a fund's size determines the expense ratio that
 12 the manager can offer in the marketplace. A decline in assets means that a fund must charge higher
 13 fees or reduce services to maintain the same level of profitability for the manager, or alternatively,
 14 the fund manager must subsidize the fund and accept a lower level of profits. Further, a competitive
 15 marketplace for fees leaves little room for managers to raise fees.¹⁹ A material drop in assets
 16 therefore poses significant risks to the survival of a fund.

17 53. Scale is especially critical for Russell's age-based funds. Russell's age-based funds
 18 are composed of a dozen underlying Russell funds. Therefore, a drop in assets in the Russell age-
 19 based funds also reduces assets in a dozen other proprietary funds.

20 54. The Plan's assets offered a life preserver to Russell when Russell took over the
 21 Plan's menu amid the rash of redemptions in its age-based funds. Without \$1 billion in new
 22 investment in its age-based funds from the Plan, Russell would have suffered a further 25%
 23 decrease in reported assets in the funds by year-end 2017 (even after accounting for appreciation
 24

25 ¹⁸ There were six other fiduciaries, representing eleven plans, that held Russell's age-based funds
 26 as of year-end 2016. Two of the six, representing six plans, removed Russell's age-based funds in
 27 2018 and 2019. *See infra*, ¶ 58.

28 ¹⁹ *See* CALLAN INSTITUTE, 2019 Investment Management Fee Study (“[S]ustained downward
 pressure on both fee schedules and mandate sizes results in significantly lower dollar fees paid
 (manager revenue) per client.”), *available at*
<https://www.callan.com/uploads/2020/05/0ce3d1da04c2c1d8e13a30a67dbdfabe/callan-2019-im-fee-study.pdf> (last visited September 15, 2021).

1 during the year). But by moving the Plan to its age-based funds, Russell (1) prevented another
 2 material decline, (2) doubled assets in the funds compared to their year-end position without the
 3 Plan, and (3) returned to 2013 asset levels. Thus, while the swap could not be justified based on
 4 prospective returns for participants, see *supra*, the change significantly benefitted Russell.

5 *Russell's Self-Serving Swap Has Cost the Plan More than \$100 Million*

6 55. Russell's funds have continued to underperform since they were adopted for the
 7 Plan. As of the end of 2020, average annual returns of Russell's age-based funds still lagged the
 8 State Street funds over the prior 3- and 5-year periods. The funds also lagged a standard industry
 9 benchmark, the S&P Target Date indexes,²⁰ over the same periods.

10 *Illustration 2: Prior Age-Based Funds vs. Russell Age-Based Funds vs. S&P TDF Indexes*
 11 *As of Year-End 2020*

12 *2060 Fund*

	3-Year	5-Year
State Street	11.02%	12.57%
S&P Target Date Index	9.38%	11.71%
Russell	7.61%	10.12%

15 *2055 Fund*

	3-Year	5-Year
State Street	11.02%	12.57%
S&P Target Date Index	9.26%	11.55%
Russell	7.54%	10.12%

19 *2050 Fund*

	3-Year	5-Year
State Street	11.04%	12.58%
S&P Target Date Index	9.24%	11.44%
Russell	7.60%	10.15%

23 *2045 Fund*

25
 26 ²⁰ The S&P Target Date Index series represents a market consensus of asset class exposure and
 27 glide path across the universe of target date fund managers. The index is designed to help retirement
 28 plan fiduciaries screen, select, and monitor appropriate target date funds. In addition to
 underperforming the S&P Target Date index over the prior 3- and 5-year periods as of year-end
 2020 (implying a lack of appropriate monitoring, as Defendants continued to hold the funds), each
 Russell fund in Illustration 2 also underperformed the index over the prior 3- and 5-year periods as
 of year-end 2016 (implying a deficient process to select the funds).

	3-Year	5-Year
State Street	10.87%	12.48%
S&P Target Date Index	9.15%	11.24%
Russell	7.50%	10.11%

3 *2040 Fund*

	3-Year	5-Year
State Street	10.69%	12.13%
S&P Target Date Index	9.00%	10.95%
Russell	7.40%	10.06%

7 *2035 Fund*

	3-Year	5-Year
State Street	10.45%	11.71%
S&P Target Date Index	8.67%	10.47%
Russell	7.53%	9.42%

12 *2030 Fund*

	3-Year	5-Year
State Street	10.08%	11.16%
S&P Target Date Index	8.19%	9.77%
Russell	7.34%	8.65%

17 *2025 Fund*

	3-Year	5-Year
State Street	8.98%	10.15%
S&P Target Date Index	7.73%	9.08%
Russell	6.99%	7.82%

21 *2020 Fund*

	3-Year	5-Year
State Street	6.02%	7.34%
S&P Target Date Index	5.83%	7.59%
Russell	5.08%	6.21%

25 56. Russell yielded these deficient results—often underperforming the Plan’s prior
 26 funds by 2-3% per year and the S&P Target Date indexes by more than 1% per year—while taking
 27 on comparable and often higher levels of risk. Indeed, over each period, Russell’s 2035, 2040,
 28

1 2045, 2050, 2055, and 2060 funds exhibited higher risk (as measured by the standard deviation of
 2 returns) than the State Street funds or the S&P Target Date index.²¹

3 57. In recent years, Russell also has failed its own test. Russell maintains customized,
 4 composite benchmarks for its age-based funds. These custom benchmarks blend approximately a
 5 dozen underlying benchmark indexes and are designed to mirror the asset allocation of each Russell
 6 age-based fund. These self-selected custom benchmarks have limited value, as they do not meet
 7 the objectiveness criteria adopted by the Department of Labor²² and do not test the success of
 8 Russell's strategic asset allocation decisions (as they simply mirror Russell's allocation decisions).
 9 Objective benchmarks such as the S&P Target Date indexes and the State Street funds that Russell
 10 replaced are superior benchmarks to examine whether Russell's approach offered the Plan a
 11 reasonable likelihood of increased returns or decreased risk (it did not—see illus. 1-2). However,
 12 Russell's customized benchmarks can test whether Russell is successfully implementing its chosen
 13 strategy for its funds. The last two calendar years reveal significant problems at Russell. Each age-
 14 based fund underperformed Russell's custom benchmark in 2019 by between 1.19% and 2.47%.
 15 Russell then missed its mark even further in 2020, as its 2045, 2050, 2055, and 2060 funds
 16 underperformed Russell's custom benchmark by between 3.20% and 3.29%; the 2025, 2030, 2035,
 17 and 2040 funds underperformed Russell's custom benchmark by between 1.06% and 2.77%; and
 18 the retirement fund (which absorbed the 2020 fund) underperformed Russell's custom benchmark
 19 by 0.44%.

20 58. Russell's non-age-based funds also have not fared well. Since the swap, the
 21 standalone funds associated with each asset class in the prior menu have outperformed, as a
 22 weighted composite, the comparable Russell funds in the same asset classes in the new menu.
 23
 24

25 ²¹ Russell also continued to trail the Blackrock Lifepath Index series and JPMorgan Passive Blend
 26 series, see *supra* at note 16, in every vintage over 3- and 5-years as of year-end 2020.

27 ²² See 29 C.F.R. § 2550.404a-5(d)(1)(iii) (benchmark for ERISA plans must be “an appropriate
 28 broad-based securities market index” and may not be “administered by an affiliate of the investment
 issuer [or] its investment adviser”). The market benchmark used by the Plan for DOL purposes for
 the Russell 2025, 2030, 2035, 2040, 2045, 2050, 2055, and 2060 funds, the MSCI ACWI IMI index,
 outpaced each Russell fund over each 5-year period as of year-end 2016-2020, and each 3-year
 period as of year-end 2017-2020.

1 59. The consequences for participants have been severe. The Plan has lost more than
 2 \$100 million in investment returns due to Russell's replacement of the prior menu with its own
 3 poorly performing proprietary funds. Yet, Russell has stubbornly retained these proprietary funds
 4 in the Plan, contrary to its ongoing fiduciary duty to monitor the funds (and to remove these
 5 imprudent funds under the circumstances here).

6 60. In the meantime, two additional fiduciaries representing six plans pulled their
 7 investments from Russell's age-based funds in 2018 and 2019. This left the Plan holding a critical
 8 74% of the reported assets in Russell's age-based funds as of the end of 2019. Russell's
 9 subordination of participants' interests to its own business interests through retention of its
 10 underperforming funds constitutes a further breach of Russell's fiduciary duties to the Plan.

11 *The Caesars Defendants Failed to Prudently Review and Monitor Appointed Fiduciaries*

12 61. Although outsourcing fiduciary control of an investment menu is not a breach
 13 standing alone, the Caesars Defendants had fiduciary duties to prudently appoint and monitor other
 14 Plan fiduciaries.

15 62. Based on Russell's conflict of interest in selecting its own funds, the inferior track
 16 record of Russell's funds relative to the Plan's existing menu, Russell's decision to immediately
 17 swap all Plan funds for proprietary funds, the ongoing underperformance of the Russell funds, and
 18 the Plan Investment Committee's lack of subsequent intervention, it does not appear that the Plan
 19 Investment Committee prudently reviewed Russell's investment plan prior to retaining Russell or
 20 prudently surveyed Russell's actions after Russell assumed control. Nor does it appear that Caesars
 21 prudently monitored the Plan Investment Committee after Caesars executed the Plan Investment
 22 Committee's agreement with Russell. Caesars was on notice that the Plan Investment Committee
 23 had outsourced its duties to Russell, and Caesars did not intervene once the Plan Investment
 24 Committee allowed Russell to take wholly self-serving actions not supported by the interest of the
 25 Plan. As losses piled up, the Plan Investment Committee should have monitored Russell's ongoing
 26 poor results and removed Russell, and the 401(k) Plan Committee has a continuing obligation to
 27 do the same. Meanwhile, Caesars should have monitored the Plan's situation and taken necessary
 28 action to secure the interest of participants, to the extent that the Plan Investment Committee and

1 401(k) Plan Committee failed to prudently monitor or remove Russell. In all of these respects, the
 2 Caesars Defendants failed to live up to their fiduciary obligations.

3 *Plaintiffs Lacked Knowledge of Defendants' Fiduciary Misconduct*

4 63. Plaintiffs did not have knowledge of all material facts necessary to understand that
 5 Defendants breached their fiduciary duties (including the relative performance of the Russell age-
 6 based funds and other Russell funds relative to other comparable funds, the risk level of the Russell
 7 funds relative to other comparable funds, the relative lack of assets of the Russell funds, the
 8 declining assets in the Russell funds, the rejection of the Russell funds by other fiduciaries, etc.)
 9 until shortly before this suit was filed. Further, Plaintiffs did not have actual knowledge of the
 10 specifics of Defendants' decision-making and monitoring processes with respect to the Plan,
 11 because this information is solely within the possession of Defendants prior to discovery. For
 12 purposes of this Second Amended Complaint, Plaintiffs have drawn reasonable inferences
 13 regarding these processes based upon (among other things) the facts set forth herein.

14 **CLASS ACTION ALLEGATIONS**

15 64. 29 U.S.C. § 1132(a)(2) authorizes any participant or beneficiary of the Plan to bring
 16 an action individually on behalf of the Plan to seek the remedies provided by 29 U.S.C. § 1109(a).
 17 Plaintiffs seek certification of this action as a class action pursuant to these statutory provisions and
 18 Fed. R. Civ. P. 23.

19 65. Plaintiffs assert their claims against Defendants on behalf of a class of participants
 20 and beneficiaries of the Plan defined as follows:²³

21 All participants and beneficiaries of the Plan at any time on or after
 22 August 1, 2017, excluding any employees of Caesars with
 responsibility for the Plan's investment or administrative functions.

23 66. Numerosity: The Class is so numerous that joinder of all Class members is
 24 impracticable. During the putative class period, the Plan had over 40,000 participants.

25 67. Typicality: Plaintiffs' claims are typical of the Class members' claims. Like other
 26 Class members, Plaintiffs participated in the Plan, were invested in Russell funds, and have suffered
 27 injuries as a result of Defendants' mismanagement of the Plan. Defendants treated Plaintiffs

28 ²³ Plaintiffs reserve the right to propose other or additional classes or subclasses in their motion for class certification or subsequent pleadings in this action.

1 consistent with other Class members with regard to the Plan. Defendants managed the Plan as a
 2 single entity, and therefore Defendants' imprudent decisions affected all Class members similarly.

3 68. Adequacy: Plaintiffs will fairly and adequately protect the interests of the Class.
 4 Plaintiffs' interests are aligned with the Class that they seek to represent, and they have retained
 5 counsel experienced in complex class action litigation, including ERISA class action litigation.
 6 Plaintiffs do not have any conflict of interest with any Class members that would impair or impede
 7 their ability to represent other Class members.

8 69. Commonality: Common questions of law and fact exist as to all Class members, and
 9 predominate over questions solely affecting individual members, including but not limited to:

- 10 a) Whether Defendants are fiduciaries of the Plan, and the scope of their fiduciary
 11 duties;
- 12 b) Whether Russell breached its fiduciary duties under 29 U.S.C. § 1104 by engaging
 13 in the conduct described herein;
- 14 c) Whether the Caesars Defendants breached their fiduciary monitoring duties by
 15 engaging in the conduct described herein;
- 16 d) The proper form of equitable and injunctive relief; and
- 17 e) The proper measure of monetary relief.

18 70. Class certification is appropriate under Fed. R. Civ. P. 23(b)(1)(A) because
 19 prosecuting separate actions against Defendants would create a risk of inconsistent or varying
 20 adjudications with respect to individual Class members that would establish incompatible standards
 21 of conduct for Defendants.

22 71. Class certification is also appropriate under Fed. R. Civ. P. 23(b)(1)(B) because
 23 adjudications with respect to individual Class members, as a practical matter, would be dispositive
 24 of the interests of the other persons not parties to the individual adjudications or would substantially
 25 impair or impede their ability to protect their interests. Any award of equitable relief by the Court
 26 would be dispositive of non-party participants' interests.

27 72. Class certification is also appropriate under Fed. R. Civ. P. 23(b)(3) because
 28 questions of law and fact common to the Class predominate over any questions affecting only

1 individual Class members, and because a class action is superior to other available methods for the
 2 fair and efficient adjudication of this litigation. Defendants' conduct as described in this Second
 3 Amended Complaint applied uniformly to all Class members. Class members do not have an
 4 interest in pursuing separate actions against Defendants, as the amount of each Class member's
 5 individual claims is relatively small compared to the expense and burden of individual prosecution,
 6 and Plaintiffs are unaware of any similar claims brought against Defendants by any Class members
 7 on an individual basis. Class certification also will obviate the need for unduly duplicative litigation
 8 that might result in inconsistent judgments concerning Defendants' practices. Moreover,
 9 management of this action as a class action will not present any likely difficulties. In the interests
 10 of justice and judicial efficiency, it would be desirable to concentrate the litigation of all Class
 11 members' claims in a single forum.

12 **COUNT I**

13 **Breach of Duties of Loyalty and Prudence Against Defendant Russell**

14 73. Plaintiffs repeat and re-allege Paragraphs 1 through 70 of the Second Amended
 15 Complaint as though fully set forth herein.

16 74. Defendant Russell is and was a fiduciary of the Plan under 29 U.S.C. § 1002(21)
 17 and 29 U.S.C. § 1002(38).

18 75. ERISA imposes strict fiduciary duties of loyalty and prudence upon Defendants in
 19 their selection and monitoring of investment funds for the Plan's investment menu. The relevant
 20 statute, 29 U.S.C. § 1104(a)(1), provides:

21 [A] fiduciary shall discharge his duties with respect to a plan solely in the interest of the
 22 participants and beneficiaries and—

23 (A) for the exclusive purpose of

24 (i) providing benefits to participants and their beneficiaries; and
 25 (ii) defraying reasonable expenses of administering the plan; [and]

26 (B) with the care, skill, prudence, and diligence under the circumstances then
 27 prevailing that a prudent man acting in a like capacity and familiar with such

matters would use in the conduct of an enterprise of like character and with like aims

76. These fiduciary duties are continuing in nature, and apply to both the selection of investments for the Plan and the subsequent monitoring, retention, removal, and replacement of those investment options. *See Tibble*, 135 S. Ct. at 1828.

77. Russell breached its fiduciary duties by replacing all of the Plan's investments with inferior proprietary funds. This was neither prudent nor in the interest of Plan participants and beneficiaries. Russell further breached its fiduciary duties by retaining its inferior proprietary funds in the Plan's investment menu.

78. Russell's fiduciary breaches resulted in significant losses to the Plan, and Russell is liable for these losses under 29 U.S.C. §§ 1109(a) and 1132(a)(2).

79. In addition, Russell is liable for other appropriate relief, as provided by 29 U.S.C. §§ 1109(a) and 1132(a)(2), and reasonable attorneys' fees and expenses as provided by 29 U.S.C. § 1132(g).

COUNT II

Breach of the Duty of Prudence, including Failure to Monitor Appointed Fiduciaries, Against the Caesars Defendants

80. Plaintiffs repeat and re-allege Paragraphs 1 through 77 of the Second Amended Complaint as though fully set forth herein.

81. Defendant Caesars is and was a fiduciary of the Plan under 29 U.S.C. § 1002(21). The Plan Investment Committee was also a fiduciary of the Plan under 29 U.S.C. § 1002(21) until it was replaced by the 401(k) Plan Committee on or after July 20, 2020. The 401(k) Plan Committee has been a fiduciary of the Plan under 29 U.S.C. § 1002(21) since it succeeded to the duties of the Plan Investment Committee on or after July 20, 2020.

82. The Caesars Defendants had, and have, fiduciary duties to act prudently in the process of appointing other persons to fiduciary positions and monitoring their performance. The Caesars Defendants were obligated to take prompt and effective action to protect the Plan and its participants and beneficiaries from Russell's imprudent and self-serving actions.

83. Caesars breached its fiduciary duties by, among other things:

- 1 a) Failing to appropriately monitor and evaluate the Plan Investment Committee or
2 401(k) Plan Committee or have a system in place for doing so;
- 3 b) Acknowledging the Plan Investment Committee's appointment of Russell and
4 then failing to take any action when the Investment Committee allowed Russell
5 to make wholly self-serving and imprudent changes to the Plan's investment
6 menu; and
- 7 c) Failing to take action when the Plan Investment Committee and 401(k) Plan
8 Committee continued to retain Russell despite Russell's ongoing self-serving
9 and imprudent management of the Plan.

- 10 84. The Investment Committee breached its fiduciary duties by, among other things:
- 11 a) Failing to prudently survey Russell's investment plan prior to outsourcing
12 fiduciary investment duties to Russell;
 - 13 b) Failing to prudently review Russell's actions after Russell immediately
14 eliminated the entire Plan investment menu in favor of Russell's propriety funds;
 - 15 c) Failing to appropriately monitor and evaluate Russell on an ongoing basis or
16 have a system in place for doing so; and
 - 17 d) Failing to remove Russell despite Russell's ongoing self-serving and imprudent
18 management of the Plan.

- 19 85. The 401(k) Plan Committee breached its fiduciary duties by, among other things:
- 20 a) Failing to appropriately monitor and evaluate Russell after succeeding to the
21 fiduciary duties of the Plan Investment Committee;
 - 22 b) Failing to remove Russell despite Russell's ongoing self-serving and
23 imprudent management of the Plan.

- 24 86. As a consequence of the foregoing breaches of fiduciary duty, the Plan suffered
25 significant losses.

- 26 87. The Caesars Defendants are liable for these losses and other appropriate relief as
27 provided by 29 U.S.C. §§ 1109(a) and 1132(a)(2) on account of their failures to prudently appoint
28 and monitor their fiduciary appointees.

PRAAYER FOR RELIEF

WHEREFORE, Plaintiffs, as the Class representatives, and on behalf of the Plan, pray for relief as follows:

- A. A determination that this action may proceed as a class action under Rule 23(b)(1), or in the alternative, Rule 23(b)(3) of the Federal Rules of Civil Procedure;
 - B. Designation of Plaintiffs as Class Representatives and Plaintiffs' counsel as Class Counsel;
 - C. A declaration that Defendants have breached their fiduciary duties under ERISA;
 - D. An order compelling Defendants to personally make good to the Plan all losses that the Plan incurred as a result of the breaches of fiduciary duties described herein, and to restore the Plan to the position it would have been in but for this unlawful conduct;
 - E. An order enjoining Defendants from any further violations of their ERISA fiduciary responsibilities, obligations, and duties;
 - F. Other equitable relief to redress Defendants' practices and to enforce the provisions of ERISA as may be appropriate, including modification of the Plan's investment lineup, removal of Russell or other Plan fiduciaries deemed to have breached their fiduciary duties, and/or appointment of independent fiduciaries;
 - G. An award of pre-judgment interest;
 - H. An award of attorneys' fees and costs pursuant to 29 U.S.C. § 1132(g) and/or the common fund doctrine;
 - I. An award of such other and further relief as the Court deems equitable and just.

Dated: July 15, 2024

/s/ *Paul J. Lukas*

NICHOLS KASTER, PLLP

Paul J. Lukas, MN Bar No. 22084X*
Brock J. Specht, MN Bar No. 0388343*
Ben Bauer, MN Bar No. 0398853*
4700 IDS Center, 80 S 8th Street
Minneapolis, MN 55402
Telephone: 612-256-3200
Facsimile: 612-338-4878
lukas@nka.com
bspecht@nka.com

1 bbauer@nka.com
2 * LR IA 11-2 petition approved

3 Paul S. Padda
4 NV Bar No. 10417
5 PAUL PADDA LAW, PLLC
6 4560 South Decatur Blvd., Suite 300
7 Las Vegas, NV 89103
8 Tel: (702) 366- 1888
9 psp@paulpaddalaw.com

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11 ATTORNEYS FOR PLAINTIFFS AND
12 THE PROPOSED CLASS
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